

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, APRIL 26, 2022

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, April 26, 2022, at 10:00 a.m., in Council Chambers, with the following present:

Michael H. Vincent	President
Douglas B. Hudson	Vice President
Cynthia C. Green	Councilwoman
John L. Rieley	Councilman
Mark G. Schaeffer	Councilman
Todd F. Lawson	County Administrator
Gina A. Jennings	Finance Director
J. Everett Moore, Jr.	County Attorney
Vince Robertson	Assistant County Attorney

Call to Order	The Invocation and Pledge of Allegiance were led by Mr. Vincent. Mr. Vincent called the meeting to order.
M 164 22 Approve Agenda	A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, to approve the Agenda as presented. Motion Adopted: 5 Yeas. Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea; Mr. Hudson, Yea; Mr. Rieley, Yea; Mr. Vincent, Yea
Minutes	The minutes of the April 5, 2022 meeting were approved by consensus.
Correspondence	There was no correspondence. Public Comments were heard.
Public Comment	Mr. Moore read a statement received from Mr. Howard Lee Gorrell. Mr. Gorrell wrote about Sussex senior citizens that are sacrificing their retirement to help local businesses and requested Council's consideration of recognizing county retirees. Ms. Adele Jones spoke about her concerns of the overdevelopment in Sussex County.
Presentation Joshua M. Freeman Foundation	Ms. Patti Grimes, Executive Director of the Joshua M. Freeman Foundation gave a presentation providing an update of the state of the arts and the impact that the organization has had over the years. Ms. Grimes thanked the Council for their support of the foundation.

**M 165 22
Approve
Consent
Agenda Item**

A Motion was made by Mr. Schaeffer, seconded by Mrs. Green to approve the following items listed under the Consent Agenda:

**Use of Existing Sewer Infrastructure Agreement
Estuary Phase 4 & Oak Acres (County), Miller Creek Area**

**Use of Existing Sewer Infrastructure Agreement, IUA 807-1
Oyster House Village, West Rehoboth Area**

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Tribute/
Cape
Henlopen**

A Tribute was presented to the Cape Henlopen High School Cheerleading Squad honoring them for achieving the 2022 DSCA State Championship title.

**Adminis-
trator's
Report**

Mr. Lawson read the following information in his Administrator's Report:

1. Projects Receiving Substantial Completion

Per the attached Engineering Department Fact Sheets, Acadia Landing – Phase 1B (Construction Record) and Oyster House Village – Phase 3A (Construction Record) received Substantial Completion effective April 6th and April 11th respectively.

2. Delaware State Police Activity Report

The Delaware State Police year-to-date activity report for March 2022 is attached listing the number of violent crimes arrests, as well as total traffic charges and corresponding arrests. In addition, DUI and total vehicle crashes investigated are listed. In total, there were 188 troopers assigned to Sussex County for the month of March.

3. Sussex County Council FY 2023 Budget Workshop

On Tuesday, May 3rd, the Sussex County Council will meet for its annual budget workshop. The Fiscal Year 2023 Budget Workshop will be held at 9:00 a.m. at the Sussex County West Complex. The next regularly scheduled County Council meeting will be held on Tuesday, May 10th, at 10:00 a.m.

[Attachments to the Administrator's Report are not attached to the minutes.]

**Dewey
Beach
Station
Lease
Agreement**

Robbie Murray, Emergency Medical Services Director presented a lease agreement with the Town of Dewey Beach to support the expansion of seasonal paramedic services along the coastal community for Council's consideration. The agreement would allow for a single person only daytime unit from Memorial Day until Labor Day. Mr. Murray explained that last summer the department experienced significant increases in response to the Lewes and Rehoboth fire districts. The agreement includes a cost of \$500 per year to help offset utility costs.

**M 166 22
Approval of
Dewey
Beach
Station
Lease
Agreement**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, that Sussex County enter into the proposed lease agreement with the Town of Dewey Beach to support the expansion of seasonal paramedic service along the coastal community.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Eastern
Shore
Poultry
Company,
Inc. Lease
Renewal**

Bill Pfaff, Economic Development Director presented two leases for the Delaware Coastal Business Park for Council's consideration.

The first lease presented is for Eastern Shore Poultry Company, Inc. for an extension; they have been in the park since 1992. This is their third amendment to their lease extension; the request is for a ten-year extension.

**M 167 22
Approval of
Lease
Extension/
Eastern
Shore
Poultry
Company,
Inc. Lease**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson that the Sussex County Council approve the lease renewal with Eastern Shore Poultry Company, Inc., located in the Delaware Coastal Business Park, 21724 Broad Creek Ave., Georgetown, DE. The term of the lease shall be ten (10) years, with CPI rent adjustment made in five (5) years.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**JDJS, LLC/
Jenny Gems/
Lease
Agreement**

The second lease presented was for JDJS, LLC (dba) JennyGems, a new tenant to the park. The lease will be for thirty years (30) with two additional five-year (5) renewals with CPI rent adjustments every five (5) years.

**M 168 22
Approval of
Lease/JDJS,
LLC/Jenny**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley that the Sussex County Council approve the lease agreement with JDJS, LLC (dba) JennyGems in the Delaware Coastal Business Park, located at 21348 Cedar Creek Ave., Georgetown, DE. The term of the lease shall be thirty (30) years with two a (2) additional five (5) year renewals, with CPI rent adjustments

Gems every five (5) years.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea

Proposed Ordinance Mulberry Knoll Hans Medlarz, County Engineer presented for consideration a Proposed Ordinance to authorize the issuance of up to \$1,329,000 of general obligation bonds of Sussex County in connection with increased costs with the Mulberry Knoll Sewer District Project and authorizing all necessary actions in connection therewith.

Introduction of Proposed Ordinance Mr. Rieley introduced the Proposed Ordinance entitled “AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$1,329,000 OF GENERAL OBLIGATION BONDS OF SUSSEX COUNTY IN CONNECTION WITH INCREASED COSTS ASSOCIATED WITH THE MULBERRY KNOLL SEWER DISTRICT PROJECT AND AUTHORIZING ALL NECESSARY ACTIONS IN CONNECTION THEREWITH”.

The Proposed Ordinance will be advertised for Public Hearing.

Chapel Green/Project S20-16 Hans Medlarz, County Engineer presented a recommendation to award Project S20-16, Chapel Green, Conley’s Chapel Village & Wil King Road South Area for Council’s consideration.

M 169 22 Project S20-16 Approval A Motion was made by Mr. Schaeffer, seconded by Mrs. Green that based upon the recommendation of the Sussex County Engineering Department, that Contract S20-16, Chapel Green, Conley’s Chapel Village & WIL Road South Area, be awarded to Pact One, LLC for Bid Alternates B, C, & D in the amount of \$2,129,050.00.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea

FEMA Mitigation Grant/25867 Berry Street Hans Medlarz, County Engineer presented a FEMA Mitigation Grant contract award for 25867 Berry Street, Long Neck for Council’s consideration.

M 170 22 Contract Award / FEMA Mitigation Grant A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer that based upon the recommendation of the Sussex County Engineering Department, that the FEMA Mitigation project for 25867 Berry Street, be awarded to East Coast Structural Movers, Inc. for their base bid and alternate 2 deduct in the amount of \$158,150.00, contingent upon FEMA concurrence.

Old Business/ Ordinance to Amend Chapter 99 and 115 (Wetland, Water Resources and Buffers)

Jamie Whitehouse, Planning and Zoning Director reminded Council that at the regular meeting on March 22nd, an update was provided for the Proposed Ordinance. He then reviewed the timeframe of the Proposed Ordinance.

Vince Robertson, Assistant County Attorney explained that the feedback that was received during the March 22nd meeting. The feedback received was incorporated into a form of a draft ordinance. Mr. Robertson then discussed the changes that were made to the Proposed Ordinance.

Mr. Robertson explained in the current code, Chapter 99 has a requirement that if there are wetlands on the site, there has to be a notice in the deed. A change was made to expand that existing requirement to reference that the notice now has to incorporate the fact that if there are resources and resource buffers on a site in addition to wetlands, that notice has to be within the deeds and restrictive conveyance. In addition, there is the possibility that if there is a disturbance of a resource or resource buffer, that may result in a violation of the Sussex County Zoning and Subdivision Code and penalties that are included in the Proposed Ordinance.

In Section 6, additional language was added to state that the boundary of the resource shall be marked on the site itself with permanent markers and signage, with the location and type of signage depicted on the final plat. It was also added further into the Proposed Ordinance to state “the upland edge of all Resource Buffers shall be clearly marked with permanent in-ground markers and signage located at one-hundred-foot intervals. Such signage shall be at least five inches by seven inches in size.” Mr. Robertson explained that the one-hundred-foot intervals came from looking at the width of typical lots within cluster subdivisions. At one-hundred feet, that would be essentially one every two lots with the idea that you would be able to see one of the signs regardless of where you are located in the subdivision.

The next change made was within Resource Buffer Width Averaging. Based on the feedback received, it was changed that the averaging can occur within Resource Buffers adjacent to the same Resource to adjust the required Zone B Resource Buffer.

Under Table 2: Resource Buffer Activities by Zone, clarifications were made to clarify the language. One of those was to state “Walking Trails where any impervious area runoff is managed under a Sussex Conservation District Permit that are generally perpendicular to a Resource for the purpose of providing access to the Resource or a Permitted Activity with the Resource Buffer” would be permitted in both Zone A and B. In addition, language was added to read “Walking Trails running by and with a Resource (i.e., generally parallel with the Resource) where any impervious area runoff is managed under a Sussex Conservation District Permit” is not permitted in Zone A but permitted in Zone B.

A discussion was held about averaging and if any buffer widths in new developments would be less than they currently are today. Mr. Medlarz

Old Business/ Ordinance to Amend Chapter 99 and 115 (Wetland, Water Resources and Buffers) (continued)

explained that it could occur, however it would be a rare case that it would occur. Mr. Robertson replied that currently, there is no buffer from non-tidal wetlands. Therefore, in most situations, there are non-tidal wetlands which have a buffer that is required, and you cannot average away.

A discussion was held about the current requirements and the proposed requirements regarding buffer sizes.

Mr. Robertson reviewed the options section of the Proposed Ordinance. It was eliminated for any of them to apply to Zone A. In addition, language was added that the options can only be used as follows “but only for those Resource Buffers adjacent to Perennial Non-Tidal Rivers and Streams, Non-Tidal Wetlands and Intermittent Streams.”

It was clarified to add language to state “a residential subdivision, residential conditional use or residential planned community” in Section G. In addition, language was included to state “but only for those Resource Buffers adjacent to Perennial Non-Tidal Rivers and Streams, Non-Tidal Wetlands and Intermittent Streams.” This eliminates the possibility of using those options in Zone A.

When there is an off-site buffer, language was included for clarification. The language added states as follows “the area within this conservation easement shall adhere to the requirements of subsection D, herein, and shall not be used for agricultural purposes”.

Mr. Robertson then reviewed the violations and penalties section. Under this section, the following language was added:

“(a) A fine of \$10,000.00 per quarter-acre of disturbance or part thereof shall be imposed; and

(b) Resource Buffer rehabilitation and replanting; in the area where the violation occurred, in accordance with a Mitigation Plan approved by the Director that complies with the following:

- (i) For every tree removed or destroyed with a caliper of six inches or greater at breast height, there shall be at least three replacement trees planted within the buffer area.**
- (ii) The replacement trees shall be a native species.**
- (iii) The quality and size of the replacement trees shall be at least two inches caliper at breast height. Any tree that was removed or destroyed shall be replaced through the Mitigation Plan at a ratio of at least one inch per caliper at breast height for each inch of caliper removed. The property owner and/or party who violates this Section shall be responsible for the health and survival of the replacement trees, including regular necessary watering, for a minimum of two years and shall replace any trees that die within two years of planting.**

Old Business/ Ordinance to Amend Chapter 99 and 115 (Wetland, Water Resources and Buffers) (continued)

(c) No building or zoning permits shall be issued, nor shall any inspections occur within the Phase where the violation occurred (including, but not limited to building code and utility inspections) until the buffer rehabilitation is complete and approved by the Director.”

Mr. Hudson questioned how it can be determined and verified the size and/or diameter of the trees that were removed. Mr. Medlarz replied that prior to development, the line of disturbance and buffer line is marked out and staff inspects these sites daily. Mr. Whitehouse added when inspections occur, the stump is typically visible and evidence of the diameter of the tree that has been cut. He added that if that occurs, a picture is taken for documentation purposes.

Grant Requests

Mrs. Jennings presented grant requests for Council’s consideration.

M 171 22 Seaford Historical Society

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to give \$2,000 (\$2,000 from Mr. Vincent’s Councilmanic Grant Account) to the Seaford Historical Society for the Nanticoke Heritage Byway project.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea; Mr. Hudson, Yea; Mr. Rieley, Yea; Mr. Vincent, Yea

M 172 22 First State Community Action Agency

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to give \$1,000 (\$1,000 from Countywide Youth Account) to First State Community Action Agency, Inc. for a golf tournament fundraiser.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea; Mr. Hudson, Yea; Mr. Rieley, Yea; Mr. Vincent, Yea

M 173 22 Shoes that Fit

A Motion was made by Mrs. Green, seconded by Mr. Schaeffer to give \$1,500 (\$1,500 from Mrs. Green’s Councilmanic Grant Account) to Shoes that Fit for School Uniforms for Sussex County students.

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea; Mr. Hudson, Yea; Mr. Rieley, Yea; Mr. Vincent, Yea

M 174 22 Lord Baltimore Lions Charities, Inc.

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to give \$2,000 (\$2,000 from Mr. Hudson’s Councilmanic Grant Account) to Lord Baltimore Lions Charities, Inc. for their community medical equipment loaner program.

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;

**Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

M 175 22 **A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to give
Optimist \$1,500 (\$1,500 from Countywide Youth Grant) to Optimist International
Internation- Foundation for Essay Contest, Youth Appreciation Day, and Respect for
al Law project.
Foundation**

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

M 176 22 **A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to give
Indian River \$1,000 (\$1,000 from Mr. Hudson's Councilmanic Grant Account) to Indian
Soccer Club River Soccer Club for a new striper.**

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

Introduction **Mr. Vincent introduced a Proposed Ordinance entitled "AN ORDINANCE TO
of Proposed GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL
Ordinances RESIDENTIAL DISTRICT TO ALLOW FOR AN ON-PREMISES
ELECTRONIC MESSAGE CENTER TO BE LOCATED ON A CERTAIN
PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED,
SUSSEX COUNTY, CONTAINING 7.03 ACRES, MORE OR LESS"**

**Mr. Hudson introduced a Proposed Ordinance entitled "AN ORDINANCE
TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM
RESIDENTIAL DISTRICT FOR MULTI-FAMILY (60 UNITS) TO BE
LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN
BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 14.45 ACRES,
MORE OR LESS"**

**Mr. Hudson introduced a Proposed Ordinance entitled "AN ORDINANCE
TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY
FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR
MEDIUM RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND
LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY,
CONTAINING 14.45 ACRES, MORE OR LESS"**

The Proposed Ordinances will be advertised for Public Hearing.

**Council
Member
Comments'**

Mr. Schaeffer recognized the passing of Joe Hudson yesterday.

**Mr. Hudson recognized that yesterday was a year since the passing of Cpl.
Keith Heacock's during the line of duty for the Delmar Police Department.**

M 177 22 **At 11:26, a Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to
Recess recess to go out to the Emergency Operation Center for the Topping**

Ceremony.

M 178 22 Reconvene At 12:58 p.m., a Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, to come out of recess back into Regular Session.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea

M 179 22 Go Into Executive Session A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer to recess the Regular Session and go into Executive Session for the purpose of discussing matters relating to land acquisition.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea

Executive Session At 1:05 p.m., an Executive session of the Sussex County Council was held in the Basement Caucus Room to discuss matters relating to land acquisition. The Executive Session concluded at 1:28 p.m.

M 180 22 Reconvene At 1:31 p.m., a Motion was made by Mr. Hudson, seconded by Mrs. Green to come out of Executive Session and into Regular Session.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea

M 181 22 ES Action/ Parcel 2022-G A Motion was made by Mr. Rieley, seconded by Mr. Hudson authorizing the County Administrator to negotiate, enter into a contract and proceed to closing for a parcel identified as 2022-G.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea

Rules Mr. Moore read the procedure for public hearings on zoning matters.

Public Hearing/ A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-

CU2285

1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A TOURIST HOME TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 2.831 ACRES, MORE OR LESS” (Conditional Use No. 2285) filed on behalf of Ashley DiMichele (property lying on the south side of Cave Neck Road [S.C.R. 88] approximately 0.43 mile west of Diamond Farm Road [S.C.R. 257]) (911 Address: 26182 Cave Neck Road, Milton) (Tax Parcel: 235-21.00-48.00)

The Planning and Zoning Commission held a Public Hearing on this application on February 10, 2022 and on March 24, 2022, the Commission recommended denial of the application for the ten reasons stated.

(See the minutes of the Planning and Zoning Commission dated February 10, 2022 and March 24, 2022.)

Jamie Whitehouse, Planning and Zoning Director, presented the application.

The Council found Ms. Ashley DiMichele spoke on behalf of her Application; that she owns a tiny home; that her and her husband plan to use it as a potential retirement spot; that they plan to buy a piece of land to relocate it; that when the COVID-19 pandemic hit, business and income went down; that once things began to open up she desired to make money with the idea of an Airbnb to recoup some of the money spent; that the home received more traffic than expected; that she did not realize it was required to get a conditional use as a tourist home; that in regards to the campground clause, there are definitions under 115-14 for a bed and breakfast, a boarding house known as a tourist home, a guest house, a hotel, lodging house known as a tourist home, a manufactured home park, a motel, motel court, tourist court or motel lodge, a rental unit, a rooming house also known as a tourist home, a tenting site and a tourist home; that the information in regards to campgrounds under Section 115-172H, there is no breakdown of what a campground is under definitions; that under tenting area, is defined as any park, tourist park, camp court site, parcel or tract of land which is designed, maintained or intended for the purpose of supplying a location or accommodation for two or more tents, trailers, camp trailer or other camping vehicles or facilities as temporary living or sleeping quarters for persons; that she only has one tourist home; that she questioned if that is what defines a tenting area and if it is two or more; that she does not intend to have another person bringing in another trailer; that her closest neighbor submitted a letter of support; that in Section 115-4, the code defines a dwelling as any building, structure, or portion thereof which is occupied as, or designated or intended for occupancy as, a residence and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof; that “dwelling” shall not include hotels, motels, motor lodges, boarding and lodging houses, tourist houses or similar structures; that since this is not a dwelling, she has not rented it out full-time; that it cannot be rented out

**Public
Hearing/
CU2285
(continued)**

full-time based on the definition of a dwelling; that in Section 115-141.2, recreational vehicles are defined as a vehicle which is built on a single chassis, 400 square feet or less when measured at the largest, horizontal projection, designed to be self-propelled or permanently towable by a light-duty truck, and designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel, or seasonal use; that she has only rented it out short-term; that if you were to view this as a dwelling, it is built to the standards of a home in Sussex County Code, other than the space requirements; that Ordinance 2152 limited the amount of square feet for a habitable space; that the Building Code says that a habitable space can be 150 square feet for the first person and 150 square feet for an additional person after that; that it does meet the efficiency apartment standards; that it meets the standards for the square feet living for the Building Code requirements but not the Council's Ordinance; that there is water that goes into a grade tank and is pumped out as needed; that there is a composting toilet that breaks down.

Public comments were heard.

Mr. Michael Rhue of Seaford spoke in favor of the application. Mr. Rhue discussed the need for affordable housing in Sussex County. Mr. Rhue submitted pictures showing an example of a tiny home. He spoke about the need for a district or zoning for tiny homes.

Mr. Jeff Bender spoke in favor of the application. He stated that he was in favor of tiny homes; they do more with less. They are more affordable to build and use less resources. Mr. Bender believes that the clientele that would be renting these out should be accommodated. He feels that it should be made easier to explore these types of opportunities.

The Public Hearing and Public Record were closed.

**M 182 22
Defer
Action/
CU 2285**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to defer action on the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A TOURIST HOME TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 2.831 ACRES, MORE OR LESS".

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Public
Hearing/
CZ1953**

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL

**Public
Hearing/
CZ1953
(continued)**

DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.646 ACRES, MORE OR LESS” (Change of Zone No. 1953) filed on behalf of Brasure Holdings, LLC (property lying on the northwest side of Lighthouse Road [Rt. 54] approximately .27 mile south of Zion Church Road [Rt. 20]) (911 Address: 35131 Lighthouse Road, Selbyville) (Tax Parcel: 533-19.00-13.02)

The Planning and Zoning Commission held a Public Hearing on this application on March 10, 2022, and recommended approval of the application subject to the eight reasons outlined.

(See the minutes of the Planning and Zoning Commission dated March 10, 2022.)

Jamie Whitehouse, Planning and Zoning Director, presented the application.

The Council found that Mrs. Heather Brasure, the wife of Mr. Justin Brasure, Vice President spoke on behalf of the application and also present was Mr. David Brasure, President of Brasure’s Carpet Care.

Mrs. Brasure stated they are seeking a rezoning of the proposed property, which is located between their current business on property zoned as C-1 (General Commercial) and the property owned by Mr. David Brasure and Ms. Peggy Brasure; that the property they are seeking to rezone is owned by Brasure Holdings, LLC, which is owned by Mr. David Brasure and Ms. Peggy Brasure; that the property is leased to Brasure’s Carpet Care, Inc.; the subject property is currently zoned AR-1 (Agricultural Residential);that the request to have the property rezoned to C-2 (Medium Commercial); that they request this rezoning to allow an 80’x100’ storage facility; that due to the new development in the area, they have outgrown their current building; that by adding the proposed storage facility, they would be able to purchase padding and chemicals in bulk; that purchasing in bulk would allow them to purchase materials at a discounted rate; that they currently have two high-top sprinters which do not fit in the current garages; that the proposed building would be able to accommodate the high-top vehicles, in addition to the two vehicles used to provide estimates; that they require a climate controlled room for the storage of rugs and cushions which are awaiting delivery, as well as rugs being stored for their customers; that they currently employ 14 full-time employees and the business seems to grow every day.

There were no public comments.

The Public Hearing and Public Record were closed.

A Motion was made by Mr. Hudson, seconded by Mr. Rieley to Adopt

**M 183 22
Adopt
Ordinance
No. 2848
/CZ1953**

Ordinance No. 2848 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.646 ACRES, MORE OR LESS” (Change of Zone No. 1953) filed on behalf of Brasure Holdings, LLC for the following reasons given by the Planning and Zoning Commission:

- 1. C-2 Medium Commercial Zoning is designed to support retail sales and the performance of consumer services. It is intended to be located near arterial and collector roads.**
- 2. The Applicant’s property is currently zoned AR-1 along Lighthouse Road. It is adjacent to the Applicant’s property and business that is zoned C-1 and adjacent to other lands owned by the Applicant. This is an appropriate location for C-2 zoning.**
- 3. C-2 Zoning at this location along Lighthouse Road will benefit nearby residents of Sussex County by providing a convenient location for retail uses or consumer services.**
- 4. There is no evidence that this rezoning will have an adverse impact on neighboring properties or area roadways.**
- 5. The site is mostly in the “Coastal Area” according to the Sussex County Land Use Plan and Future Land Use Map. This is an appropriate location for C-2 Zoning according to the Plan.**
- 6. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity, and welfare of the County.**
- 7. No parties appeared in opposition to the rezoning application.**
- 8. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.**

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

Mr. Moore stated that the next three Applications are combined CZ1967, CZ1968 and CU2334.

**Public
Hearing/
CZ1967/
CZ1968/
CU2334**

A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 43.777 ACRES, MORE OR LESS” (Change of Zone No. 1967) filed on behalf of Henlopen Properties, LLC (property lying on the southeast side of Kings Highway [Rt. 9] and north side of Gills Neck Road [S.C.R. 267]) (911 Address:

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N/A) (Tax Parcel: 335-8.00-37.00 [portion of])

The Planning and Zoning Commission held a Public Hearing on this application on March 10, 2022 and on April 14, 2022, the Commission recommended approval of the application subject to the seven reasons outlined.

(See the minutes of the Planning and Zoning Commission dated March 10, 2022 and April 14, 2022.)

A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 3.041 ACRES, MORE OR LESS” (Change of Zone No. 1968) filed on behalf of Henlopen Properties, LLC (property lying on the southeast side of Kings Highway and on the north side of Gills Neck Road) (911 Address: N/A) (Tax Parcel: 335-8.00-37.00 [portion of])

The Planning and Zoning Commission held a Public Hearing on this application on March 10, 2022 and on April 14, 2022, the Commission recommended approval of the application subject to the seven reasons outlined.

(See the minutes of the Planning and Zoning Commission dated March 10, 2022 and April 14, 2022.)

A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM RESIDENTIAL DISTRICT FOR MULTI-FAMILY (267 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 43.777 ACRES, MORE OR LESS” (Conditional Use No. 2334) filed on behalf of Henlopen Properties, LLC (property lying on the southeast side of Kings Highway [Rt. 9] and on the north side of Gills Neck Road [S.C.R. 267]) (911 Address: N/A) (Tax Parcel: 335-8.00-37.00 [portion of])

The Planning and Zoning Commission held a Public Hearing on this application on March 10, 2022 and on April 14, 2022, the Commission recommended approval of the application subject to the twelve reasons and subject to the eighteen recommended conditions as outlined.

(See the minutes of the Planning and Zoning Commission dated March 10, 2022 and April 14, 2022.)

Jamie Whitehouse, Planning and Zoning Director, presented the

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applications.

The Council found that Mr. David Hutt, Esq. with Morris James spoke on behalf of Applications CZ 1967, CZ 1968 and CU 2334 for Henlopen Properties, LLC; that he is representing both the owners of the property, Mitchell Family, LLC and the Applicant, Henlopen Properties, LLC; that also present were Mr. Robert Mitchell and Mr. Jerry Mitchell, members of the Mitchell Family, LLC, Mr. John Myer and Mr. Jon Hoffman, representatives of Henlopen Properties, LLC., Mr. Ring Lardner, civil engineer with Davis, Bowen & Friedel, Inc.; Mr. Dennis Hughes, II, the traffic engineer with Davis, Bowen & Friedel, Inc., Mr. Steven Cahill, geologist and Mr. Mark Davidson, a principal land planner with Pennoni; that the current Applications were not the first Applications to be filed for the project; that the first proposed plan for the property was filed in April 2019; that the name of the project has changed several times; that the project was called “The Mitchell Farm” with the submission of the first Application; that the approved name became Zwaanendael Farm; that the property is currently known as Mitchell’s Corner; that a number of things have changed since the Applications were filed; that there has been a change in the directorship of Sussex County Planning & Zoning, from Ms. Janelle Cornwell to Mr. Jamie Whitehouse; that since the submission of the Application there have been numerous conversations and correspondence regarding the scheduling of the public hearings for the Applications; that in order to have a public hearing on a land use application, pursuant to the memorandum of understanding between DelDOT and Sussex County, a Traffic Impact Study (TIS) Review Letter was required; that the Applicant was awaiting the completion of the TIS Review Letter; that the initial response to the TIS Review Letter occurred October 2021; that the response was to the TIS performed for the initial Application; that initially there was a total of five submitted applications; that since then, the applications have been reduced; that the current Applications received a Supplemental TIS Review letter; that the currently proposed Applications reduced the commercial impact of the project; that stated within the Supplemental TIS Review Letter, the Applications being heard are a trip generation reduction of approximately 50% from the initial Applications; the subject property is located across the street from the Cape Henlopen High School; that next to the Cape Henlopen School is the Jack Lingo Real Estate office; that currently under construction is the Lewes Medical Campus, which is proposed to be an assisted living facility; that west of Gills Neck Road is the future location of the Village Center; that located on the same side as the subject property, at the corner of Gills Neck Road and Kings Highway is the Cape Henlopen Medical Center; that the Mitchell Family filed a previous Conditional Use Application (CU 2112) in 2018 for the Cape Henlopen Medical Center; that the Cape Henlopen Medical Center is a good demonstration of the need for professional services within Sussex County as it serves many residents within the immediate area; that continuing down Kings Highway, on the same side as the subject property, towards the City of Lewes, are the offices of Lane Builders; that the next property is the Big Oyster Brewery; that on the northern boundary of the

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property is Jefferson Apartments and Bay Breeze Estates, both of which are located within the City of Lewes; that on the eastern side of the subject property is The Moorings, formally known as Cadbury at Lewes; that the most detailed history of the project can be found within the Cultural Resource Assessment, prepared by Dr. Ed Otter; that the majority of the mentioned culturally significant resources are found closer to Pot Hook Creek than the subject site; that the historical item mentioned is the existing farmhouse located on the subject property; that the farmhouse is still occupied by Mr. Jerry Mitchell; that the subject property has been with the Mitchell Family since the late 1800's; that the first Mitchell family member was a Robinson; that if one looks at the George Robinson ownership in the late 1800's, that is when the Mitchell Family ownership began; that most recently Mr. Mitchell and his family have owned the 58-acre farm; that from 1998 until 2013 the property was located within the Agricultural Preservation; that with the development around the subject property, the farmland was becoming very difficult to farm, which resulted in the decision to sell the property; that as the Mitchell Family was working towards selling the property, they were approached by adjacent property owners; that several portions of the 58-acre parcel was sold to adjacent neighbors; that the portion to the rear of the property was sold to The Moorings; there was a portion sold to The Big Oyster, which was the subject of an application for rezoning from AR-1 to C-3; that the parcel, located on the corner of Kings Highway and Gills Neck Road was the subject of CU 2112 for the Cape Henlopen Medical Center; that after the pieces of lands were sold off, the property currently consists of 47-acres; that the current Applications request a Change of Zone, for approximately three acres, next to the site of the Cape Henlopen Medical Center; that the Change of Zone Application seeks to change the zoning designation from AR-1 to C-2 Medium Commercial; that an additional Change of Zone Application requests to change the zoning classification of approximately 44-acres of the property from AR-1 to MR (Medium-Density Residential); that there is also a Conditional Use Application seeking approval for a multi-family use of the property, for 267 units, on the MR zoned portion of the property; that the final Application is a Subdivision application, which was necessary to create all the various component parts of the project; that currently the property is completely zoned AR-1; that immediately south of the proposed site is B-1 Neighborhood Business Zoning, which is the location of the Village Center Project; that moving closer toward Route 1, there is existing C-1 and B-1 properties at the corner of Clay Road and Kings Highway; that more toward the City of Lewes, the Big Oyster property is zoned C-1, with C-3 property immediately behind it; that across the street from the subject site are two properties, located within the City of Lewes, zoned as General Commercial; that immediately behind that property is R-5 Zoning, which is the City of Lewes' mixed residential zoning; that continuing on the North side, the area is zoned R-2, Residential Low Density within in the City of Lewes; that adjacent to those properties is the City of Lewes, CFHC Zoning, which is Community Facilities Health Care Zoning; that this is the site of the Lewes Senior Campus; that located closer to the City of Lewes is more General Commercial properties.

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The Council found that Mr. Ring Lardner spoke on behalf of the Applications; that he is a professional engineer with Davis, Bowen & Friedel, Inc.; that the property is a total of 46.81-acres; that the portion of land requesting C-2 Zoning is located along Kings Highway, adjacent to the Cape Henlopen Medical Center; that per DelDOT, Kings Highway is classified as an Other Principal Arterial, and furthermore identified as a major arterial roadway per No. 7 of the definition found in 115-4 of the County Code; that the remaining portion of land is approximately 43.77-acres; that this portion of land also has frontage along Kings Highway and along Gills Neck Road; that Gills Neck Road is classified as a local road per DelDOT Functional Classification Map; that the layout of the site first began with a 20-ft. forested buffer along The Moorings, Bay Breeze and Jefferson Apartments; that this provides some additional open area to help establish the rear lot lines and allow for drainage; that this was how the lot lines were established for the townhomes and the duplexes; that they looked at the existing entrance, which is currently being utilized for Cape Henlopen Medical Center and will be jointly used by the professional office building; that the developer desired to do more residential and move away from the grid street which currently exist; that they designed a curbed entrance, which allows the service road to access both commercial properties; that they looked at how to best connect with the adjacent Big Oyster property; that Mr. Mitchell, the developer and Big Oyster have worked together on various land acquisitions and interconnectivity; that their goal was to separate the commercial traffic from Big Oyster from interacting with the residential traffic; that they designed a mini round-about; that the round-about will be designed allowing vehicles of all types to navigate the circle; that the round-about will be reviewed by both the Fire Marshal and Sussex County Engineering; that once those spots were created, they then focused on a plan which offered a mixture of duplexes and townhomes; that there are various prototypes offered within the proposed community; that the roads will be designed to Sussex County standards; that the right-of-way has been narrowed; that this allows them to bring the houses closer to the roadway; that all houses were designed to provide two car garages; that every lot will have the ability to park four vehicles; that No Parking signs will be added to prevent on street parking; that on street parking is always a concern of emergency apparatus; that all lots were designed so no lots were backed up against each other; that all lots have some type of open space between them; that this will help facilitate drainage and landscaping; that sidewalks will be located on both sides of the road for all roadways within the community, with the exception of Road C; that the reasoning is the shared-use path is adjacent to the roadway; that it would not make sense to have a shared-use path and sidewalk next to each other; that active amenities will include a dog park, a mail center, a community center, a pool, a playground and sports courts for the community to use; that they have added some additional walking paths to promote pedestrian connectivity and walkability within the community; that stormwater management will be provided by infiltration through grass swales, which are located in the open area, to the rear of the lots, perforated

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pipes and an infiltration basin with the primary and secondary basins being located along Gills Neck Road; that higher volume storms, like the 10-yr. and 100-yr. storm events, will discharge via stormpipe through the lands of JG Townsend, which will discharge into a tidal discharge; that the plan was previously approved by the Sussex Conservation District for the previous Application; that the pipe will still be able to be used for the current project; that the project does not contain any wetlands; that the project is not located within a flood plain; that the State Housing Preservation Office provided information regarding a known archeological site and some known prehistorical sites with high potential resources due to the known historic structures; that they hired Dr. Edward Otter to complete the Cultural Resource Assessment; that the Resource Assessment can be found in Appendix R of the Exhibit Booklet; that the existing buildings are proposed to be demolished; that Dr. Otter has confirmed he will perform the documentation for the existing buildings, should the Application receive approval; that about 6.34-acres of the project is located within the Wellhead Protection Area and must comply with Chapter 89 of the Sussex County Code; that Verdantas was hired to provide an Environmental Assessment Report; that there was a supplemental environmental assessment report completed and distributed.

The Council found that Mr. Steve Cahill spoke on behalf of the Applications; that he works for Verdantas; that he has been a professional geologist for about 36 years in Delaware; that within the well head area, about 2.8 million gallons of water goes into the ground; that Post-Development by collecting all of the water from the impervious covering, there is a surplus of almost 4 million gallons per year going into the well head area; that by controlling all of this water, you will reduce the runoff from the site substantially; that storm water from other areas of the project can be brought to this basin; that millions of water can be added to this well head area; that the City of Lewes is worried about water quality and quantity; that this can bring millions of gallons of water into this well head area for the City of Lewes; that it will go from sheet flow of storm water off of an agricultural field to green technology with best management practices; that the storm water runoff will be controlled, slow it down and reduce soil erosion and nutrient load; that the Lewes well head serves a lot of residential and commercial use; that the Cape Henlopen High School is near a well field and not impacted; that Cape Henlopen High School has over a million square feet of impervious cover, over 600 parking spaces, bus parking and large above ground storage tank with diesel fuel; that they have a greenhouse, a large maintenance building; that they all drain into their large recharge basin; that are several thousands of vehicles in their parking lot per year; that the Lewes water quality has been fine to his knowledge; that these type of land uses do not typically impact supply wells; that typically the operations that do include dry cleaning operations, underground storage tanks, manufacturing industries, agriculture and poultry operations; that none of those are planned for this project; that New Castle County was one of the first government agencies to get involved with water resource protection areas and their Building Codes; that they

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worked closely with the University of Delaware and DNREC to generate the maps; that some of their projects had water management agreements where you had to monitor the groundwater prior to development and after development; that the water resource agency for the University of Delaware did a study for New Castle County and looked at a number of the projects; that the cover page of the report read that ground water quality and quantity had largely been preserved under the provisions of New Castle County; that if you dig into the report, for most of the projects, the ground water improved after development or remained unchanged; that New Castle County permits recharge basins to accept both rooftop water and water from pavement but they do like to see pretreatment structures like what is being recommended for this project; that in 2016 for the Village Center, a member of the Planning and Zoning Commission reached out to DNREC to ask if the purity of the water changed for the Lewes Supply Wells; that DNREC's response was based on the sample results for the last five to ten years that were available to DNREC by the Office of Drinking Water, there has been no change in water quality; that there is the ability to drastically increase the recharge of water to this well head; that the soil conditions and depth to ground water are very good on the site for taking recharge; that there is the ability to take a good amount of water into the ground, take the runoff down and supply more water to the City of Lewes.

The Council found that Mr. Ring Lardner spoke on behalf of the Applications; that the pretreatment structure that is being proposed to be installed is above and beyond what DNREC requires for regulations; that the pretreatment structure will handle floatables along with hydrocarbons from leaking vehicles; that an oil water separator will be installed for stormwater purposes and design for the flow rates; that porous and pervious pavement are not appropriate stormwater practices for this type of project; that it does not provide pretreatment; that it has a longer and more expensive maintenance requirements for systems; that you must vacuum the road in order to keep the porous pavement open; that the property is located within the Sussex County Unified Sewer District; that the property will be served by a gravity sewer system, which will discharge to the Governors pump station; that the property may be served by both the City of Lewes Board of Public Works and Delaware Electric Cooperative as the parcel is split by both providers based on the map for electric territories; that water can be provided to the project by the City of Lewes Public Works or Tidewater Utilities; that both utilities have waterlines along the property frontage; that a CPCN will be required for either utilities; that Tidewater Utilities did provide a Willing & Able Letter to serve the project; that natural gas is available from Chesapeake Utilities; that a Traffic Impact Study was prepared in 2019; that an addendum was prepared in April 2020 for the previous withdrawn Application; that the withdrawn Application consisted of 206,500 sq. ft. of medical office buildings, 60 single-family homes and 150 multi-family homes; that the TIS Review Letter was prepared on October 7, 2021; that the improvements included within that letter were right-of-way dedication, interim improvements and build-out improvements; that subsequent to the review

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letter, a new plan, which is currently being proposed was submitted to DelDOT and Sussex County; that as part of the submission the developer stated to DelDOT that despite the reduction of traffic of approximately 50%, they would abide by the recommendations from the original study; that after review of the request in the reduction of traffic, DelDOT did not require a new TIS; that DelDOT provided an amended study and a letter; that during the same time, DelDOT had sped up the design of the DelDOT US Route 9., Kings Highway, Dartmouth Drive to Freeman Highway, DelDOT Contract T202212901 or also known as the dualization of Kings Highway; that the dualization of Kings Highway was first identified in 2009 as part of a larger agreement involving projects which have all completed their construction and their portions of overall improvements; that the improvements include Gills Neck Road and Kings Highway; that the improvements would add turn lanes on Kings Highway and Gills Neck Road; that DelDOT held a public workshop on February 23, 2022, on their improvement project; that the developer was agreeable with the interim improvements; that the developer began working on various projects for the current public hearing before the information from the DelDOT workshop was available and before final interim improvements were negotiated; that after further discussion and the developers willingness and desire to provide some temporary relief, DelDOT has agreed to interim improvements; that the improvements are slightly different from what was originally required in the October 7, 2021 letter; that DelDOT proposed additional requirements; that DelDOT's first requirement is the developer will mill and overlay approximately 3,500 linear feet of Kings Highway.; that they will convert the through lane from Gills Neck Road onto Kings Highway into a dedicated left turn lane; that this will create two left turn lanes from Gills Neck Road onto Kings Highway; that the right turn lane will be converted to a through right turn lane; that a bike lane will be worked on with DelDOT as part of the improvements; that the developer is to improve Kings Hwy., Gills Neck Road and Cape Henlopen High School; that they will convert the through lane from Gills Neck Road onto Kings Highway into a dedicated left turn lane; that this will create two left turn lanes from Gills Neck Road onto Kings Highway; that the right turn lane will be converted to a through right turn lane; that this will allow traffic to go through to Cape Henlopen High School or turn right in the intersection; that they will be adding a second through lane in the southbound direction; that a separate right turn lane will remain; that they will be shifting the intersections roadway approximately 10-ft. into the site to accomplish the improvement; that there will be two through lanes in the southbound direction and a dedicated left turn lane going onto Gills Neck Road; that the dual through lane will continue south; that a separate bicycle lane will be provided through the intersection; that they will also install a shared-use path from Cape Henlopen High School to Clay Road to complete pedestrian connectivity to Clay Road; that the developer will enter into an agreement to provide an equitable contribution to the dualization project; that the developer will dedicate 50-ft. of right of way from the center line of the road; that the developer will reserve an additional 30-ft. of right of way parallel to Kings Highway for the dualization of the project; that a 30-ft.

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dedication will occur along Gills Neck Road; that in addition to the reservation and dedicated right of way, a 15-ft. permanent easement will be provided for a shared-use path; that the developer will enter into an agreement to provide an equitable contribution to the Clay Road and Marsh Road intersection as part of the overall realignment project; that they will provide connections and cross-access easements between the onsite lots; that they will provide bicycle, pedestrian and transit improvements to include the shared-use paths; that the developer had a meeting with select individuals of the Lewes Byway Committee; that the meeting was held prior to the release of the dualization plan; that during the meeting the developer committed to working with the committee on the shared use path, landscaping and fencing; that after the release of the dualization plan, the developer reached out to the Lewes Byway Committee to reconfirm their commitment; that DelDOT is equally supportive of the development of the 10-ft shared-use path, landscaping and maintenance within the permanent easement; that an aerial view of the proposed project was shown that the project was reviewed by PLUS on December 15, 2021; that the PLUS comments and responses can be found in Exhibit M; that the PLUS comments provided were general in nature and will comply with all regulatory requirements; that Davis, Bowen & Friedel, Inc. (DBF) prepared an Environmental Assessment and Public Facility Evaluation Report in accordance of Sussex County Code, Chapter 115-194.3; that the written responses can be located within Exhibit K; that they have analyzed all of the respected items; that all mitigation measures are consistent with the Comprehensive Plan.

The Council found that Mr. David Hutt, Esq. with Morris James spoke on behalf of the Applications; that project is located within the Coastal Area according to the Future Land Use Map; that surrounding areas to the project are also located within the Coastal Area or a commercial area; that the Coastal Area is designated as one of the Sussex County's seven growth areas; that Chapter 4 of the Comprehensive Plan includes Table 4.5-2, which compares zoning districts applicable to Future Land Use categories; that both the C-2 (Medium Commercial District) and the MR Medium-Density Residential District are applicable zoning districts within the Coastal Area; that the County Code describes the purpose of the C-2 (Medium Commercial Zoning District) as a district which supports retail sales and performance of consumer services, permitting a variety of retail, professional and services businesses; that the district should be primarily located near arterial and collector streets; that the district accommodates community commercial users who do not have outside storage or sales; that the County Codes description of the C-2 Medium Commercial District exactly describes the purpose the Applicant desires with the proposed project; that the project proposes to provide additional professional and business services in an area where the services are needed; that this need is demonstrated best by the success of the Cape Henlopen Medical Center; that the previously approved Conditional Use for the Cape Henlopen Medical Center mirrors the purpose proposed for the property; that the developer hired an architect to design a building for the site; that the

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architect studied the architecture in the area; that the architect provided a letter explaining the proposed building, as shown on the rendering; that there are comments on record regarding the architecture along Kings Highway; that the architect described the architecture along Kings Highway as numerous architectural motifs in the context which may be evoked rationalize any architectural style; that due to the various architectural styles along Kings Highway it is difficult to match any one of those; that the developer requested the architect consider the nearest architectural style and blend the building to those nearest to the property; that features from the Cape Henlopen Medical Center and Cape Henlopen High School, compliment those features while performing the same idea for the proposed townhomes along Kings Highway; that the developer determined the square footage of all buildings in the surrounding area; that some of the buildings considered were Cape Henlopen High School at 367,000 sq. ft., Lewes Senior Living Campus at 223,000 sq. ft., The Moorings at 117,000 sq. ft., the future Village Center at 75,000 sq. ft. and Cape Henlopen Medical Center at 39,000 sq. ft.; that the building proposed for the project is smaller than almost all other studied buildings, being just slightly bigger than the Cape Henlopen Medical Center; that the proposed building is an appropriate size and scale for the area; that the County Code states commercial properties should be located along arterial and collector streets; that Kings Highway is a perfect match for the proposed use as it is considered a major arterial by Sussex County; that the same process and considerations were made regarding the proposed rezoning of about 43-acres to be MR Medium-Density Residential with a Conditional Use of the 267 units; that according to the Sussex County Code, the MR District is to provide for medium-density residential development in areas which are, or expected to become generally urban in character and where sanitary sewer and water supplies may or may not be available at the time of construction; that a permitted Conditional Use is for multi-family dwelling structures, which created the need for the Conditional Use application, which accompanies the Change of Zone application; that the purpose of a Conditional Use is to provide uses which are generally public or semi-public in character, being essential and desirable for the convenience and welfare; that because of the nature of the use, the importance to the relationship of the Comprehensive Plan and possible impact on neighboring properties and Sussex County, create the requirement for extra planning judgement on location and site plan; that the purpose of the presented Applications are to provide for medium residential development, in areas which are becoming more urbanized; that there are many communities that exist along Gills Neck Road; that if you stay along Kings Highway, you begin with The Village Center commercial site along with a number of other commercial uses; that the same is true along the opposite site of the street; that the City of Lewes is nearby which is urban in character in and of itself; that there are townhomes and duplexes located within Governors, Admirals Chase, Breakwater, The Moorings and The Lewes Senior Living Campus; that within the City of Lewes, multifamily housing is offered at Jefferson Apartments, Dutchman's Harvest and Henlopen Gardens; that Bay Breeze Estates is a single-family use, located within the R-2 zoning classification

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with the City of Lewes, that the density within Bay Breeze Estates is still three units to an acre; that multifamily is located adjacent to the subject property, as well as across the street from the property; that in correspondence in the file, there is reference to the density for the project; that include in the project book, are the densities for the surrounding communities; that Dutchman's Harvest is 17.7 units to the acre; that Jefferson Apartments is 9.8 units to the acre; that The Moorings is 6.4 units to the acre; that Henlopen Gardens is 5.5 units to the acre; that BayBreeze Estates is 3 units to the acre; that directly across the street from the proposed commercial area are commercial properties; that the project fits into the proposed area; that the layout for the property was done purposefully with good land use principals in mind; that the more intense uses should be located closer to the highway, decreasing in intensity moving further away from the highway; that moving closer to Bay Breeze Estates and The Moorings the uses become duplexes, which are a less intense use; that the Comprehensive Plan states lands within the Coastal Area should be able to accommodate both commercial and residential; that medium to higher densities, between 4 to 12 units to the acre, can be appropriate in certain locations; that an appropriate location for this is where there is central water and sewer, when near a significant number of commercial uses and employment centers, when keeping with the character of the area, when situated along a main road or near a major intersection; that the project meets all of those characteristics; that the TIS Review Letter did state there are several intersections without adequate levels of service within the area; that the final solution to the issue is the dualization of Kings Highway; that waiting on the improvements would not be beneficial to the community; that due to this, the developer and DelDOT agreed upon interim improvements, to allow traffic to be improved for the time period it takes for DelDOT to complete the dualization project; that the Memorandum of Understanding seeks to have a Level of Service Detainer sections; that the most recent Memorandum of Understanding recognizes the Level of Service D is not always obtainable and this requirement may create an undue burden on a property owner looking to develop a property, given the prior development which has occurred in an area contributing to the existing level of service; that a level of service cannot be degraded by a project; that with the proposed interim improvements, there will be no degrading by the proposed project; that the improvements will provide an upgrade of service until DelDOT provides the final solution with the dualization of Kings Hwy; that they will be market rate units; that during the February 23, 2022 workshop with DelDOT, it was said the estimate for the construction improvements was \$23,000,000.00; that it would be an undue burden to require the last property owner to dualize Kings Highway; that although the Applicant cannot provide the dualization of Kings Highway, they did desire to provide some temporary relief, which will be afforded through the interim improvements; that the property is located within the Level 1 Investment area according to the State Strategies Map; that PLUS had no objection to the proposed project; that Investment Level 1 reflect areas which are already developed in an urban or suburban fashion, where infrastructure is available and where future redevelopment

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or infill projects are expected and encouraged by state policy; that State Strategies Map, Comprehensive Plan and the Zoning Code were all guideposts for the project's design and layout; that a letter was submitted from Mr. Jerry Mitchell and Mr. Bob Mitchell, owners of the property; that in their letters, it discusses how much pride the family has taken in its ownership of the property and discusses how farming is no longer a viable option for this property; that the letter states how they believe that they have found a quality developer to complete the project; that the developer will help to maintain the buffer area; that the County Code Chapter 89 describes in detail what an applicant has to do within these areas; that the proposed project will be able to comply with those requirements; that there will be significant enhancements and benefits to this well head protection area including the elimination of the farming soil, using best management practices for stormwater; that there will be approximately 4 million gallons of water into the wellhead protection area just from that area; that the concerns with the Conditional Use was largely due to the wellhead protection area; that there will be enhancements and benefits to that wellhead protection area; that the Conditional Use had eighteen conditions (A-R) as recommended by the Planning and Zoning Commission; that Condition K relates to construction sitework and deliveries; that those activities occur Monday through Saturday from 7:00 a.m. until 6:00 p.m. with no Sunday hours; that the Planning and Zoning Commission recommended no Saturday hours, only Monday through Friday from 7:00 a.m. until 6:00 p.m.; that the developer proposes and asks for consideration to modify that condition to allow Saturday hours that match DelDOT's timeframe for construction in the Coastal areas of Sussex County; that those hours are from October 1st through April 30th, Saturday construction, site work services and deliveries can occur and then between May 1st and September 30th, the prohibition on any activities would occur; that the letter from Bob Mitchell received was distributed.

Public comments were heard.

Mr. Robert Mitchell spoke in support of the Application. Mr. Mitchell stated that his family has owned and been in control of this property for seven generations. When it came time to make the decision to sell this property, it was a family discussion and not taken lightly. The family was involved in the surrounding community by involvement in local civic groups and churches. When the decision was made to sell the property, it was recognized that there was an obligation to make sure that it was chosen wisely of what would be done with the property. Mr. Mitchell shared that Henlopen Properties has been fantastic to work with; his family is very comfortable leaving this to them.

Mr. Thomas Panetta from the Lewes Board of Public Works spoke on the Application. The Lewes Board of Public Works (LBPW) has been monitoring this application through the planning process due to the property sitting within the wellhead protection area. He added that given the importance of providing quality water to the citizens of both Lewes and

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(continued)**

the County, LBPW has hired their own geotechnical firm to do a study to review the applicant's report and the current situation for advisement to LBPW. The final report is expected to be received in another week. Mr. Panetta asked for consideration of an extension of the public comment period to allow their professional engineers and geologist input. He added that today was the first time that he has viewed the revised report; he would like to provide that to their geologist for review. Mr. Panetta discussed if approval of the project is given, would this set a precedent for approving the remainder of the projects without having an underlying guidance of how to the wells would be protected. Mr. Panetta requested that the public comment period be left open for a two-week period.

Ms. Keri McDaniel spoke in opposition of the Application. She asked for reconsideration of the rezoning applications submitted by Henlopen Properties. She believes that we need to be brave and have forward thinking to keep growth in Sussex County in check. She added that the current zoning rules of the property should not be adjusted. Ms. McDaniel commented that the community's safe drinking water should be protected along with the health and well being of all citizens. Ms. McDaniel explained that the higher density and commercial use of this rezoned area along this highway will directly impact the City's five water wells that are adjacent to the property as well as the well head protection area. Ms. McDaniel is encouraged that LBPW is hiring their own geologist and environmental team. Ms. McDaniel questioned if the infrastructure in Lewes is ready for this development along with other projects that are in the process. Ms. McDaniel asked for everyone to be part of the best management practices for the long-term solution for growth in Sussex County. Ms. McDaniel believes that allowing for rezoning here ignores our responsibility to protect our small spaces. The bottom line is that more people equals more traffic and pollution. Ms. McDaniel discussed the struggles with clean water in Sussex County.

Ms. Gail Vanguilder from Lewes, DE spoke on the Application. Ms. Vanguilder expressed concerns regarding traffic issues. Ms. Vanguilder asked for consideration for the County to have an independent consultant to evaluate the traffic in the area. She questioned the date of completion of the interim project and if the County is requiring the interim project be completed prior to this project going under construction. She then spoke about interconnectivity issues. Ms. Vanguilder expressed concerns of the open drainage vs. the closed drainage. She then spoke on the building design.

The Public Hearing was closed.

**M 184 22
Defer Action
on CZ1967**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley to defer action on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF

**M 184 22
Defer Action
on CZ1967
(continued)**

LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 43.777 ACRES, MORE OR LESS” for the reasons given by Planning and Zoning numbered 1 through 7 and to defer for a period of two weeks to May 6th for the Lewes Board of Public Works and any other member of the public to submit their reports on the well head protection issue. Subsequent to that, the Applicant would have an additional period of time until May 20th to submit any response to that.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**M 185 22
Defer Action
on CZ1968**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley to defer action on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 3.041 ACRES, MORE OR LESS” for the reasons given by Planning and Zoning numbered 1 through 7 and to defer for a period of two weeks to May 6th for the Board of Public Works and any other member of the public to submit their reports on the well head protection issue. Subsequent to that, the Applicant would have an additional period of time until May 20th to submit any response to that.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**M 186 22
Defer Action
on CU2334**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley to defer action on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM RESIDENTIAL DISTRICT FOR MULTI-FAMILY (267 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 43.777 ACRES, MORE OR LESS” for the reasons given by Planning and Zoning numbered 1 through 12 with conditions 13 A through R and to defer for a period of two weeks to May 6th for the Board of Public Works and any other member of the public to submit their reports on the well head protection issue. Subsequent to that, the Applicant would have an additional period of time until May 20th to submit any response to that.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;

**M 186 22
Defer Action
on CU2334
(continued)**

**Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**A Motion was made by Mr. Hudson, seconded by Mr. Rieley to adjourn at
4:35 p.m.**

**M 187 22
Adjourn**

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

Respectfully submitted,

**Tracy N. Torbert
Clerk of the Council**

{An audio recording of this meeting is available on the County's website.}